



NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

MICHAEL JOSEPH KILROY.

Debtor.

Case No. 2:15-bk-15708-RK

Chapter 11

**TENTATIVE RULING ON DEBTOR'S
MOTION TO RESTRICT ACCESS TO
PAPER FILINGS**

Date: September 27, 2017

Time: 11:00 a.m.

Courtroom: 1675

The court hereby places on the docket of the above-captioned case its tentative ruling for the Motion of Debtor Michael Joseph Kilroy to Restrict Access to Paper Filings Pursuant to 11 U.S.C. § 107(b) and In Accordance with Settlement Agreement Previously Approved by the Court, filed on September 6, 2017 (Docket Number 441), which was heard as Matter Number 3 on the court's hearing calendar on September 27, 2017 at 11:00 a.m. The tentative ruling was posted on the court's website on September 26, 2017. David L. Neale and J.P. Fritz, of the law firm of Levene, Neale, Bender, Yoo & Brill, L.L.P., represent Debtor.

TENTATIVE RULING

The court will exercise its judicial discretion to deny debtor's motion to restrict public access to paper filings in this case consisting of the litigation proceedings involving debtor's objection under FRBP 3007 to the claims of his sister (in her own and as successor in interest to his parents) and related parties based on allegations that he defrauded them by transferring an asset of an entity he sold to them acting under his apparent authority as the former owner of the entity and the resultant settlement approved by the court upon debtor's motion under FRBP 9019 wherein he agreed to pay his sister and related entities \$2.8 million to settle this and other disputes approved. In exercising its judicial discretion, the court has considered the instructions of the Ninth Circuit in *Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 433 (9th Cir. 2011) in construing 11 U.S.C. § 107 "to use care in determining whether documents containing sensitive information affecting a person's privacy interests can be made public over that person's objections." In this case, debtor contends that the allegations by his sister and related parties that he defrauded them are "scandalous" and should be sanitized upon his request by restricting public access to the litigation proceedings relating to these allegations, construing the language of 11 U.S.C § 107(b)(2) for protecting a person with respect to scandalous or defamatory matter contained in a paper filed in a bankruptcy case as absolute, citing *In re Roman Catholic Archbishop of Portland in Oregon, supra*.

The court does not agree with this contention because the Ninth Circuit in citing *In re Roman Catholic Archbishop of Portland in Oregon, supra*, employed a balancing test in construing the language of 11 U.S.C. § 107(b) and held that requests to "protect"

1 persons from disclosure of "scandalous" matter in bankruptcy filings are not upheld as
2 absolute as indicating by the circuit's balancing of various factors in deciding to grant
3 relief to prevent disclosures of "scandalous" allegations of sexual abuse by priests in
4 one instance, but deny relief in another instance. Although the allegations of sexual
5 abuse against both priests was scandalous, the fact that one priest was still active,
6 presenting a potential danger to public safety, outweighed the priest's privacy interests,
7 while the other priest, who was retired, did not present a danger to the public, and thus,
8 relief was granted because the public interest did not outweigh his privacy interests.
9 Thus, the court disallowed the disclosure of discovery material with identifying
10 information about sexual abuse allegations of the retired priest, but allowed disclosure
11 of discovery material with identifying material about sexual abuse allegations of the
12 active priest. 661 F.3d at 433-434. The court also disallowed the disclosure of a
13 punitive damages memorandum as to both priests since apparently there was an
14 insufficient showing that the public interest outweighed the privacy interests of the
15 priests. *Id.*

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19 In *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d at 426-427,
20 the court specifically looked at three considerations as to whether there was good cause
21 to seal records and protect matter from public disclosure: (1) the bankruptcy court must
22 consider the evidence of particularized harm resulting from the disclosure; (2) the
23 bankruptcy court must determine whether the balance of public and private interests
24 weighed in favor of the interest of the party requesting confidentiality; and (3) whether
25 redaction of identifying information would address the interests of the parties.
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1 In considering these three factors in this case, the court would find that the first
2 factor does not favor debtor because he offers no evidence of any particularized harm
3 from the disclosures he seeks to now restrict. In his declaration in support of the
4 motion, debtor admits that the disclosures are only "potentially harmful," and he does
5 not specify any particularized harm by the disclosures, and the court finds that his
6 declaration is conclusory and self-serving.
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8 The court would find that the balance of public and private interests does not
9 weigh in favor of the interest of debtor in requesting confidentiality. As discussed,
10 debtor offers no evidence of any particularized harm from the disclosures. As
11 recognized in the statute, 11 U.S.C. § 107(a), the general rule is that "a paper filed in a
12 case under this title and the dockets of a bankruptcy court are public records and open
13 to examination by an entity at reasonable times without charge." Thus, there is a
14 general right of public access to bankruptcy court records as statutorily recognized by
15 11 U.S.C. § 107(a), though this general rule is qualified by the specific exception of 11
16 U.S.C. § 107(b)(2) for "scandalous" and "defamatory" matter. There is a reason for the
17 general rule for public access to court records, which goes to the integrity of the judicial
18 process for transparency in court proceedings. In this case, the public has a right to
19 know the nature of the litigation dispute between the parties and the basis for the
20 settlement between them, invoking the power of the court to hear the matter and
21 approve a final settlement between them. Thus, there is an important and legitimate
22 purpose for public access to the filed court records under 11 U.S.C. § 107(a), which
23 debtor does not address in his papers.
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Moreover, the allegations against debtor in the papers filed by his parents and his sister are not so scandalous (i.e., shameful, grossly disgraceful or offensive to a sense of decency or shocking to the moral feelings of the community) to warrant restriction of public access. *In re Hart*, 516 B.R. 611 (Bankr. D. Idaho 2014), citing, *In re Roman Catholic Archbishop of Portland in Oregon, supra*. In *Hart*, the debtor sought to seal and keep confidential terms of a settlement he had with the IRS about a debt dischargeability dispute allegedly nondischargeable as tax evasion over his failure to pay income taxes for 12 years, arguing that this was "scandalous" matter to be kept confidential under 11 U.S.C. § 107(b)(2). The bankruptcy court disagreed, stating that the allegations about tax evasion were not scandalous matter as such did not rise anywhere near the level of scandal as sex abuse allegations against priests, distinguishing from *In re Roman Catholic Archbishop of Portland in Oregon, supra*. 516 B.R. at 618; see also, *In re Khan*, BAP No. CC-13-1297-DPaTa (9th Cir. BAP 2013)(unpublished opinion)(denying debtor's request to expunge her bankruptcy filing or placing bankruptcy documents under seal under 11 U.S.C. § 107(b)(2) on grounds that her employment prospects were harmed by her bankruptcy filing); *In re Associated Community Services, Inc.*, 547 B.R. 236, 241 (Bankr. E.D. Mich. 2016) and *In re Gordon Properties, LLC*, 536 B.R. 703, 711 (Bankr. E.D. Va. 2015), citing and quoting, *In re City of Detroit*, No. 13-53846, 2014 WL 8396419 at *6 (Bankr. E.D. Mich., Aug. 28, 2014)("Under *Roman Catholic Archbishop of Portland in Oregon*, determining whether matter is scandalous does not involve examining its relevance. The difficulty with this view is that many papers and pleadings in bankruptcy allege conduct that is arguably disgraceful, offensive or shameful--bad faith, willful and malicious injury, to name only a

1 few--but which courts would not consider striking because those allegations are relevant
2 to the legal claims that must be resolved."). The court in *Hart* also noted that the
3 particular allegations of tax evasion were of a nonscandalous nature was underscored
4 because there were not only of public record in the bankruptcy case, but also, in related
5 federal court tax litigation proceedings. *Id.* Similarly, the court finds that the fraud
6 allegations against debtor do not rise to same level of scandal in sex abuse allegations
7 in *In re Roman Catholic Archbishop of Portland in Oregon, supra*. In addition, this case
8 does not call for heightened scrutiny as in in *In re Roman Catholic Archbishop of*
9 *Portland in Oregon, supra*, which involved parties objecting to disclosure of sensitive
10 information who were not parties to the bankruptcy case and had limited notice, and
11 thus, little or no ability to negotiate privacy issues or to challenge the damaging
12 information. In contrast, in this case, the disclosures of sensitive information were made
13 by parties to this bankruptcy case, including debtor and creditors, his sister and related
14 entities, relating to their proofs of claim, claims objections and motion to approve
15 settlement. These parties publicly invoked the jurisdiction of this court to hear and
16 determine the dispute over the allegations which debtor now seeks to restrict access
17 "after the fact" of public litigation. There is a strong public interest in allowing public
18 access to court records which reflect the adjudication of disputes before the court and
19 under the public authority of the court, such as the papers relating to debtor's objection
20 to claims of his sister and related entities and the proceedings before the court to
21 approve the settlement between these parties.

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26 Moreover, in this case, the allegations of fraud against debtor as to his sister and
27 parents have been of public record in this bankruptcy case for at least over 9 months
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1 when debtor filed his objections to the claims of his sister and related parties, if not
2 longer, if the claims by his sister and related entities in 2015 are considered. Moreover,
3 the allegations are of public record in the state court action by debtor's sister and
4 related entities against debtor, which was filed in 2011, which also underscores the
5 nonscandalous nature of the allegations. The allegations against debtor of fraud are
6 common in bankruptcy proceedings, and it would be absurd to grant relief to debtor in
7 these circumstances because then every debtor settling a debt dischargeability dispute
8 arising under 11 U.S.C. § 523(a)(2), (4) and (6) would be entitled to sanitization relief
9 under 11 U.S.C. § 107(b)(2). See *United States v. American Trucking Associations*,
10 310 U.S. 534, 543 (1940)("There is, of course, no more persuasive evidence of the
11 purpose of a statute than the words by which the legislature undertook to give
12 expression to its wishes. Often these words are sufficient in and of themselves to
13 determine the purpose of the legislation. In such cases we have followed their plain
14 meaning. When that meaning has led to absurd or futile results, however, this Court has
15 looked beyond the words to the purpose of the act.").

16 While the allegations were settled in this case, it does not necessarily mean that
17 there was absolutely no reasonable basis in fact or in law for such allegations, for
18 example, within the meaning of Federal Rule of Bankruptcy Procedure 9011, and that
19 the public should have access to filed papers in which a controversy before the court is
20 raised and resolved to assure the transparency of the judicial process in adjudicating
21 such matters. See 11 U.S.C. § 107(a).

22 Finally, the third factor for good cause to keep documents confidential regarding
23 redaction, the court does not see that redaction would serve any useful purpose here.
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1 Papers relating to the allegations have been filed inside and outside bankruptcy court
2 since at least 2015. The allegations were a live litigation controversy before the court
3 when debtor's sister and related entities filed claims in 2015, and debtor filed his
4 objection to these claims, which controversy was litigated and resolved through public
5 court proceedings of this court. Since the papers filed were records of these court
6 proceedings, redaction would serve no useful purpose.
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8 Having conducted the careful analysis that the court must engage in to determine
9 debtor's request for privacy as to papers filed with the court under 11 U.S.C. §
10 107(b)(2), the court will deny the request. Simply speaking, the public's interest in
11 access to litigation documents filed in judicial proceedings is not outweighed by debtor's
12 private interest in suppressing unfavorable allegations against him.
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14 IT IS SO ORDERED.

15 **END OF TENTATIVE RULING**
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18 It is hereby ordered that the foregoing tentative ruling be placed on the court's
19 case docket for the above-captioned bankruptcy case.

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25 Date: September 27, 2017



Robert Kwan
United States Bankruptcy Judge